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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,737	04/18/2005	Toshihiko Nakane	TOS-161-USA-PCT	3481

27955 7590 06/27/2008

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EXAMINER	
CHUI, MEI PING	

ART UNIT	PAPER NUMBER
1616	

MAIL DATE	DELIVERY MODE
06/27/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/531,737	NAKANE ET AL.	
	Examiner	Art Unit	
	MEI-PING CHUI	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☒ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *N/A*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Action

The Examiner acknowledges receipt of application number 10/531,737 filed on 04/18/2005. Accordingly, claims 1-14 are presented for examination on the merits for patentability.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on application Nos. 2002-311033 filed on 10/25/2002, 2003-101489 filed on 04/04/2003 and 2003-332802 filed on 09/25/2003 in Japan. Should applicants desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, all certified English translation of the foreign applications must be submitted in reply to this action. 37 CFR 41.154(b) and 41.202(e).

Failure to provide a certified translation may result in no benefit being accorded for the non-English application.

Claim Rejections - 35 USC § 112 second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 5 and 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the term "deodorizing cosmetic", according to claim 2, which lacks of antecedent basis because this term is not recited in claim 2. Likewise, the recitation of this term in claims 5, 10 and 11 also lack antecedent basis.

Claims 9 and 12-14 are rejected because they depend from claims 3 and 5, and thus incorporate the limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(b) that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(1) Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohmori et al. (U. S. Patent Application Publication No. 2003/0091603).

The instant claims are drawn to a composition, for skin treatment, comprising zeolite and trisalt ethylenediaminehydroxyethyl triacetate, or zeolite and polyoxyethylene-polyoxypropylene 2-decyltetradecyl ether.

Ohmori et al. disclose a cosmetic composition comprising a variety of essential bases blended together. Ohmori et al. disclose that the essential bases include hydrophilic nonionic surfactants, sequestering agents and inorganic powders (page 3, [0045], lines 1-8, 11 and 13).

With respect to claim 1, Ohmori et al. disclose that the inorganic powder is zeolite (page 3, [0046], line 7), and the sequestering agent is trisodium ethylenediaminehydroxyethyl triacetate (page 5, [0065], lines 1 and 7). Therefore, instant claim 1 is anticipated.

With respect to claim 7, Ohmori et al. disclose that the hydrophilic nonionic surfactant is polyoxyethylene-polyoxypropylene alkyl ether (POE-POP alkyl ether), i.e. POE-POP 2-decyltetradecyl ether (page 5, [0059], lines 16-17), and the inorganic powder is zeolite (page 3, [0046], line 7). Therefore, instant claim 7 is anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

(1) Claim 2-6 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmori et al. (U. S. Patent Application Publication No. 2003/0091603) in view of Fujita et al. (EP 1099474).

Applicant Claims

Applicants claim a composition, for skin treatment, comprising zeolite and alum, wherein the zeolite is present in an amount of 0.1 to 90 % by weight (or mass) and the alum is present in amount of 0.01 % to 80 %, and the average particle size of zeolite is 10 μm or less and the average particle size of alum is 0.01 to 50 μm. In addition, Applicants also claim that there are less than 20 % zeolite particles are larger than 15 μm in the composition.

Determination of the scope and content of the prior art (MPEP 2141.01)

Gilbert et al. teach an improved personal cleansing composition comprising a mixture of cleansing base material, synthetic surfactants and a water-insoluble odor controlling agent (column 1, lines 49-55 and column 8, lines 32-33).

Gilbert et al. teach that the personal cleansing composition comprises the odor-controlling agent, i.e. zeolite, which is present in an amount greater than 0.1 % by weight, more specifically about 0.05 % to 5 % by weight, of the composition (column 2, lines 3-7, 15-19 and column 18, claim 5).

Gilbert et al. also teach that the amount of zeolite depends upon the level and type of malodor present in the base formula and can be adjusted to a desirable level accordingly (column 2, lines 27-33).

Gilbert et al. further teach that zeolite is substantially free of particles sized greater than 20 μm, and preferably, substantially free of particles sized over 15 μm. Gilbert et al. further teach that the substantially free means that the larger particles are preferably less than 3 % (column 2, lines 20-26).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Gilbert et al. neither teach the use of alum in a personal care composition comprising zeolite nor the amount and size of alum in the composition. However, the deficiency is cured by the teaching of Fujita et al.

Fujita et al. teach a deodorizing composition comprising a water-absorbing agent having deodorant and antibacterial properties, wherein the water-absorbing agent comprises a water-absorbent resin, a compound having an antibacterial function and an agent having a neutralization ability (page 3, [0008]).

Fujita et al. also teach that the neutralizing agent has a function of neutralizing ammonia, or neutralizing and adsorbing ammonia produced from ammonia-producing bacteria.

More specifically, Fujita et al. teach that the neutralizing agent is an inorganic acid salt, i.e. alums are mixtures of sulfates of various metals include aluminum iron alum, potassium

aluminum alum (also called potassium alum), ammonia alum, sodium alum (page 8, [0055-0057]).

Fujita et al. further teach that fine particulate alum, i.e. potassium alum sold under trade name TAIACE-K20 with average particle size of 20 μm, can be used in an amount of 1 % by mass (page 13, [0103] and page 10, [0109]).

Finding of prima facie obviousness Rational and Motivation (MPEP 2142-2143)

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to follow the guidance of Gilbert et al. and Fujita et al. to arrive at the instantly claimed invention.

One of ordinary skill would have been motivated to utilize alum as an odor neutralizing agent in combination with zeolite as an anti-bacterial agent, with a reasonable expectation of success, because the addition of alum can reduce or neutralize the ammonia odor produced by the bacteria, as taught by Fujita et al.

From the teachings of the references, it would be obvious that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

(2) Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohmori et al. (U. S. Patent Application Publication No. 2003/0091603).

Applicant Claims

Applicants claim a composition, for skin treatment, comprising zeolite and polyoxyethylene-polyoxypropylene 2-decyltetradecyl ether, wherein the polyoxyethylene-polyoxypropylene 2-decyltetradecyl ether has 20-28 ethylene oxide units and 10-16 propylene oxide units.

Determination of the scope and content of the prior art (MPEP 2141.01)

The teaching of Ohmori et al. has been set forth above. Essentially, Ohmori et al. teach a cosmetic composition comprising a variety of essential bases blended together. Ohmori et al. teach that the essential bases include hydrophilic nonionic surfactants and inorganic powders (page 3, [0045], lines 1-8, 11 and 13).

More specifically, Ohmori et al. teach that the hydrophilic nonionic surfactant is polyoxyethylene-polyoxypropylene alkyl ether (POE-POP alkyl ether), i.e. POE-POP 2-decyltetradecyl ether (page 5, [0059], lines 16-17), and the inorganic powder is zeolite (page 3, [0046], line 7).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Although Ohmori et al. teach the cosmetic composition comprises POE-POP 2-decyltetradecyl ether as hydrophilic nonionic surfactant, Ohmori et al. do not specifically teach the POE-POP 2-decyltetradecyl ether contains 20-28 ethylene oxide units and 10-16 propylene oxide units.

Finding of prima facie obviousness Rational and Motivation (MPEP 2142-2143)

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to follow the guidance of Ohmori et al. to arrive at the instantly claimed invention.

One of ordinary skill would have been motivated to try different POE-POP 2-decyltetradecyl ether surfactant that has incorporated different number of ethylene oxide (E. O.) units and propylene oxide (P. O.) units, and then choose the one that gives a desirable result dependent on the desired form of cosmetic product. Thus, the number of ethylene oxide (E. O.) units and propylene oxide (P. O.) units is merely a judicious selection and routine optimization of the periods taught by Ohmori et al. which would be dependent on the desired product.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because the teaching of the prior art fairly suggests the instant claim.

(3) Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tominaga, N. (U. S. Patent No. 6,077,520).

Applicant Claims

Applicants claim a composition, for skin treatment, comprising zeolite and polyoxyethylene-polyoxypropylene 2-decyltetradecyl ether, wherein the polyoxyethylene-polyoxypropylene 2-decyltetradecyl ether has 20-28 ethylene oxide units and 10-16 propylene oxide units.

Determination of the scope and content of the prior art (MPEP 2141.01)

Tominaga, N. teaches an anti-aging composition, for external cosmetics application to the skin, comprising a variety of known bases that are compatible to each other and will not impair its cosmetic effect to the skin (column 7, lines 36-37 and 45-48). Tominaga, N. also teaches that the composition is broadly applicable to cosmetic forms column 7, lines 30-31 and 36-38).

Tominaga, N. teaches that the cosmetic bases, which can be blended together, include hydrophilic nonionic surfactants and inorganic powders (column 7, lines 45-48, column 9, line 36 and column 10, line 45).

More specifically, Tominaga, N. teaches that the hydrophilic nonionic surfactant is polyoxyethylene-polyoxypropylene alkyl ether (POE-POP alkyl ether), i.e. POE-POP 2-decyltetradecyl ether (column 9, lines 51-53), and the inorganic powder is zeolite (column 10, line 45).

Ascertainment of the difference between the prior art and the claims (MPEP 2141.02)

Although Tominaga, N. teaches the cosmetic composition comprises POE-POP 2-decyltetradecyl ether as hydrophilic nonionic surfactant, Tominaga, N. does not specifically teach the POE-POP 2-decyltetradecyl ether contains 20-28 ethylene oxide units and 10-16 propylene oxide units.

Finding of prima facie obviousness Rational and Motivation (MPEP 2142-2143)

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to follow the guidance of Tominaga, N. to arrive at the instantly claimed invention.

One of ordinary skill would have been motivated to try different POE-POP 2-decyltetradecyl ether surfactant that has incorporated different number of ethylene oxide (E. O.) units and propylene oxide (P. O.) units, and then choose the one that gives a desirable result dependent on the desired form of cosmetic product. Thus, the number of ethylene oxide (E. O.) units and propylene oxide (P. O.) units is merely a judicious selection and routine optimization of the periods taught by Tominaga, N., which would be dependent on the desired product.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because the teaching of the prior art fairly suggests the instant claim.

Conclusion

No claims are allowed.

Contact Information

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616